Filed 1/31/19 P. v. Howell CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. WILLIE PAUL HOWELL, Defendant and Appellant.	E068843 (Super.Ct.No. RIF1301248) OPINION

APPEAL from the Superior Court of Riverside County. Janet Kintner, Judge. (Retired judge of the San Diego Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Cynthia M. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Seth M. Friedman and Michael Pulos, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Willie Paul Howell guilty of failure to annually update his sex offender registration within five working days of his birthday (Pen. Code, § 290.012, subd. (a), count 1)[1] and failure to register or reregister as a sex offender upon release from incarceration (§ 290.015, subd. (a), count 2). In a bifurcated hearing, a trial court found true the allegations that defendant had served two prior prison terms (§ 667.5, subd. (b)) and had two prior strike convictions (§§ 667, subds. (c) & (e)(2)(A), 1170.12, subd. (c)(2)). Defendant stipulated to the allegation of a third prior strike conviction. The court subsequently dismissed two of the prior strike convictions. It then sentenced him to the upper term of three years on count 1 and eight months on count 2, doubled pursuant to the prior strike, plus one year on each of the prison priors, for a total of nine years four months in state prison.

On appeal, defendant contends that: (1) there was insufficient evidence to support his convictions on counts 1 and 2; and (2) there was insufficient evidence to support the true findings of his prison priors.[2] We affirm.

PROCEDURAL BACKGROUND

On March 21, 2017, the information in the instant case was filed, alleging that, on or about July 10, 2012, defendant failed to annually update his sex offender registration within five working days of his birthday. (§ 290.012, subd. (a), count 1.) It also alleged

[1] All further statutory references will be to the Penal Code, unless otherwise noted.

[2] We note that defendant filed a request for judicial notice with regard to former versions of section 290. We reserved ruling for consideration with the appeal and now grant the request. (Evid. Code, § 452, subds. (a), (c).)

that, on or about April 24, 2012, defendant failed to register or reregister as a sex offender upon release from incarceration (§ 290.015, subd. (a), count 2). The information further alleged that defendant had served two prior prison terms—one for his December 31, 2002 conviction of failing to annually update his sex offender registration pursuant to section 290, subdivision (a)(D), and one for his January 9, 2008 conviction of failing to annually update his sex offender registration pursuant to section 290, subdivision (a)(1)(b). The information further alleged that defendant had three prior strike convictions from 1966, 1975, and 1981.

The court held a trial. The parties stipulated that, on January 9, 1975, defendant pled guilty to oral copulation (§ 288a) and that this conviction required lifetime registration as a sex offender (former § 290). He was advised of his duty to register upon release from custody.

The officer responsible for registering sex offenders in the city of Riverside testified at trial. He testified that sex offenders were required to register within five days of their birthdate, every year. He explained that the police used a database called the California Sex and Arson Registry (CSAR) to keep track of all the registered sex offenders in California. The officer testified specifically about defendant's CSAR record.

On December 10, 1976, defendant was given notice that he was required to register within 30 days of coming into another city to reside or in which he was going to be temporarily domiciled. Then, on December 15, 1976, defendant registered as a sex offender, and his fingerprints were taken.

On April 3, 1987, defendant registered again, listing a residence address in Moreno Valley, California. Defendant signed the form, underneath a paragraph which stated: "I am registering in compliance with Section 290 P.C. . . . I understand my requirements as stated in the appropriate code sections. I further understand that when registering pursuant to section 290 P.C. my requirement to register is lifetime and that I must register within 14 days of moving into a city or a county or a city/county." The officer testified at trial that this was the last time defendant properly registered.

On May 27, 1998, defendant filed a registration change of address/annual update form, indicating that he was moving out of a jurisdiction to a new address on Casa Blanca Street in Riverside, California. However, the officer testified that defendant never re-registered in Riverside with the Casa Blanca address.

In 2002, defendant entered a plea agreement and pled guilty to failure to register as a sex offender. On his plea form, he initialed the box indicating he would be ordered to register with law enforcement as to his place of residence.

The officer further testified that defendant's CSAR packet reflected that, on January 30, 2003, defendant was released from incarceration, and upon release, he completed Department of Justice (DOJ) paperwork, otherwise known as 8047 paperwork. Pursuant to this paperwork, defendant provided information of where he was going to be residing. The prosecutor entered into evidence defendant's 8047 form, which defendant had signed, indicating that he was registering and he had been notified that his duty to register as a convicted sex offender was a lifetime requirement, that he was required to register upon release from incarceration, and that he was required to update his

registration annually, within five working days of his birthday, among other requirements. Subsequently, defendant did not register.

In 2008, defendant was again charged with failure to register under section 290 and again pled guilty.

The officer explained that, in 2012, after being released from incarceration, sex offenders were given 15 days to register. Defendant's CSAR packet showed that he was released on February 21, 2012, and he failed to register within 15 days; thus, his record listed a 15-day violation on March 7, 2012.

Furthermore, at trial, the court took judicial notice that Judge Michelle Levine advised defendant of the requirement to register as a sex offender on March 22, 2012, in Riverside County Superior Court.

The jury found defendant guilty of counts 1 and 2. During a bifurcated trial on the prior conviction allegations, the court found true two prior strike convictions. There was a stipulation as to the third prior strike conviction. The court also found true the two prior prison convictions.

The court subsequently held a sentencing hearing. Defendant requested the court to dismiss his prior strike convictions, pursuant to *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497. The court remarked that defendant had been told repeatedly to register as a sex offender, and it addressed him directly, as follows: "That's the law. You've been told repeatedly. You are told if you didn't register, you could get life in state prison . . . Yet, you don't register. It's so simple. You register. I don't know what your problem is. I can't figure out why you don't do it. But you don't do it. [¶] I owe

the community the protection and enforcement of the law. When I look at all of the options of sentencing without life, I feel that that's enough time, hopefully. . . . [S]o I'm not inclined to give you life now." The court then struck two of defendant's prior strikes and sentenced him to the upper term of three years on count 1 and eight months on count 2, doubled pursuant to the remaining prior strike, plus one year on each of the prison priors, for a total of nine years four months in state prison.

ANALYSIS

I. The Evidence Was Sufficient to Support Defendant's Convictions

Defendant argues that the evidence did not support his convictions because there was insufficient evidence he knew of the specific registration requirements in 2012. He claims that the only evidence presented at trial was a single notification provided to him in 2003, which was nine years before his violation. He contends this notification did not show he knew of his duty to register upon release from custody or annually on his birthday in 2012. We conclude the evidence was sufficient.

A. *Standard of Review*

In reviewing a challenge to the sufficiency of the evidence, we "must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Kraft* (2000) 23 Cal.4th 978, 1053 (*Kraft*).) "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient

substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

B. *The Evidence Was Sufficient*

The jury was instructed that to find defendant guilty of count 1, it had to find: (1) he was previously convicted of section 288a; (2) he resided in the city of Riverside; (3) he actually knew he had a duty under section 290 to register as a sex offender and that he had to register within five working days of his birthday; and (4) he willfully failed to annually update his registration. A violation of section 290 "requires the defendant to actually know of the duty to act." (*People v. Garcia* (2001) 25 Cal.4th 744, 752.)

Defendant acknowledges that, in the past, he signed two plea agreements and thereby agreed to plead guilty to violations of section 290. He points out that, although the plea agreements included his initials indicating that he acknowledged his requirement to register, they did not specifically mention the duties to register upon release from custody or annually on his birthday. Regardless, on January 30, 2003, defendant signed, dated, and placed his thumbprint on a notice of sex offender registration requirement form, which explicitly stated: "I have been notified of my duty to register as a convicted sex offender pursuant to Section 290 of the California Penal Code. I understand that . . . I must annually, within 5 working days of my birthday, go to the law enforcement agency having jurisdiction over my location or place of residence and update my registration, name, and vehicle information." Moreover, the record indicates defendant was given the same (or similar) section 8047 notice of registration requirement form on December 10, 1976. In addition, the court took judicial notice that, on March 22, 2012, Judge Levine

personally advised defendant in court of the requirement to register as a sex offender. Given all this evidence, the jury could conclude that defendant knew he had a duty under section 290 to register as a sex offender within five working days of his birthday, and that he willfully failed to annually update his registration.

Defendant concedes that he "had undoubtedly been repeatedly notified of a lifetime requirement to register as a sex offender." His only argument is that the 2003 notice, where he acknowledged the specific registration requirements of registering within five days of his birthday and annually "occurred so many years before the violation that it was not sufficient by itself to prove [his] knowledge in 2012." We observe that defendant is not claiming he somehow forgot the registration requirements or was in any way unaware of them.

Viewing the record in the light most favorable to the judgment, as we must, we conclude there was substantial evidence to support defendant's convictions. (See *Kraft*, *supra*, 23 Cal.4th at p. 1053.)

II. The Evidence Was Sufficient to Support the Court's Findings

Defendant argues there was insufficient evidence to support the trial court's true findings regarding his two prison prior allegations. He contends that the evidence presented by the prosecution did not demonstrate he was actually convicted of the crimes charged and sentenced to prison. We disagree.

A. *Relevant Law*

"Imposition of a sentence enhancement under Penal Code section 667.5 requires proof that the defendant: (1) was previously convicted of a felony; (2) was imprisoned as

a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction." (*People v. Tenner* (1993) 6 Cal.4th 559, 563 (*Tenner*).)

"The state has the burden of proving defendants 'suffered' a prior conviction as specified in Penal Code section 667.5." (*People v. Crockett* (1990) 222 Cal.App.3d 258, 266 (*Crockett*).) "[A] court is allowed to make reasonable inferences from the facts presented. If there is no evidence to the contrary, the court may consider the appropriate abstract of judgment and the facts of the particular case, and utilizing the official duty presumption, find a defendant served and completed the term of imprisonment." (*Ibid*.)

We review the record in the light most favorable to the judgment "to determine whether substantial evidence supports the fact finder's conclusion, i.e., whether a reasonable trier of fact could have found that the prosecution had sustained its burden of proving the defendant guilty beyond a reasonable doubt [citation]." (*Tenner, supra,* 6 Cal.4th at p. 567.)

B. *The Evidence Was Sufficient*

The prosecutor here offered a certified copy of defendant's 2002 felony plea form in case No. RIF096918, plus the certified booking photo in that case; a certified copy of his 2008 felony plea form in case No. RIF131939, plus the certified booking photo in that case; certified copies of defendant's booking fingerprints; and testimony from a forensic technician identifying defendant as the one who made the prints. The prosecutor asserted

the plea forms reflected that defendant was incarcerated for 32 months on each case.[3] Furthermore, the prosecutor asked the court to take judicial notice that "where there is a photograph of [defendant] it matches what he looks like present today in court."

The prosecutor also relied on defendant's CSAR packet to show his previous incarcerations. The CSAR is the database maintained by the DOJ to keep track of all registered sex offenders in the State of California.[4] Defendant's individual CSAR report reflected that he was incarcerated on January 3, 2003, in the custody of the California Department of Corrections and Rehabilitation (CDCR), and was released on February 18, 2003. It also shows he was again incarcerated in the custody of CDCR on July 12, 2006, and released on November 8, 2006. It additionally shows that he was incarcerated in the custody of CDCR on January 22, 2008, and released on February 21, 2012.

Defendant points out that the plea agreements from 2002 and 2008 presented were only signed by him and not the District Attorney or the court; thus, they were not substantial evidence that he was actually convicted and sentenced to prison. We acknowledge such, but note that the record shows the agreements were filed with the court. We further observe that defense counsel previously made a motion in limine to

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[3] Portions of the copies of the plea agreements in the record on appeal have been redacted. It is unclear whether the copies presented to the court were similarly redacted; however, the court did not mention any redactions when reviewing the evidence during the trial on the priors.

[4] Defendant does not challenge the authenticity of the registry.

exclude defendant's two prior convictions for violating section 290 and acknowledged that defendant was sentenced to 32 months in each case.[5]

Defendant concedes that the CSAR shows he was incarcerated, but asserts that it does not show the reason for the incarcerations. The CSAR lists dates and what event occurred on those dates (e.g., it lists January 3, 2003, with the corresponding event listed as "Incarceration CDCR"). Defendant signed the plea agreement in case No. RIF096918 on December 30, 2002, and it was filed the next day; thus, it was reasonable for the court to infer that the incarceration on January 3, 2003, reflected in the CSAR, was for the conviction in that case. (See *Crockett*, *supra*, 222 Cal.App.3d at p. 266.) Similarly, defendant signed the plea agreement in case No. RIF131939 on January 8, 2008, and it was filed the next day; thus, it was reasonable for the court to infer that the incarceration on January 22, 2008, reflected in the CSAR, was for the conviction in that case. (*Ibid*.)

We acknowledge that the evidence adduced here regarding the prison priors was not the best proof under section 667.5. When the section 969b prison packet is available, "the better practice certainly is to introduce it in evidence." (*Tenner*, *supra*, 6 Cal.4th at p. 567.) However, we must review the record in the light most favorable to the judgment.

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[5] We note that the record on appeal contains a copy of the probation officer's report, which reflects defendant's conviction on December 31, 2002, of a violation of section 290 in case No. RIF096918, and his sentence of 32 months in state prison. The report shows he was admitted to prison on January 3, 2003, and released on parole on February 18, 2003. He was subsequently returned and paroled numerous times.

The probation officer's report also reflects defendant's convictions on January 9, 2008, of three counts of section 290 in case No. RIF131939, and his sentence of 32 months in state prison. It further shows he was returned to prison on January 22, 2008, and subsequently returned and paroled numerous times.

(*Ibid.*) In doing so, we conclude the evidence was sufficient to support the court's finding that defendant suffered two prior prison convictions.

DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

RAPHAEL
J.